

**REMARKS**

Claims 1-55 and 58-67 are pending in the application.

Claims 1-55 and 58-67 have been rejected.

Claims 1, 16, 19-23, 33, 44-45, 55 and 58 have been amended.

**Rejection of Claims under 35 U.S.C. § 103**

Claims 1-6, 8-14, 16, 17, 19-31, 33-42, 44-53, 55 and 58-66 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Delph, U.S. Patent No. 6,199,104 (Delph), in view of Chong, et al., U.S. Patent Publication No. 2002/0144233 (Chong). Claim 7 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Delph, U.S. Patent No. 6,199,104 (Delph) and Chong, et al., U.S. Patent Publication No. 2002/0144233 (Chong), in view of Landsman et al, U.S. Patent 6,314,451 (Landsman). Claims 15, 18, 32, 43, 54 and 67 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Delph, U.S. Patent No. 6,199,104 (Delph) and Chong, et al., U.S. Patent Publication No. 2002/0144233 (Chong), in view of Boyle, et al., U.S. Patent No. 6,138,158 (Boyle).

While not conceding that the cited references qualify as prior art, but instead to expedite prosecution, Applicants have chosen to respectfully disagree and traverse the rejection as follows. Applicants reserve the right, for example, in a continuing application, to establish that the cited references, or other references cited now or hereafter, do not qualify as prior art as to an invention embodiment previously, currently, or subsequently claimed.

In order for a claim to be rendered invalid under 35 U.S.C. § 103, the subject matter of the claim as a whole would have to be obvious to a person of ordinary skill in the art at the time the invention was made. *See* 35 U.S.C. § 103(a). This requires: (1) the reference(s) must teach

or suggest all of the claim limitations; (2) there must be some teaching, suggestion or motivation to combine references either in the references themselves or in the knowledge of the art; and (3) there must be a reasonable expectation of success. *See* MPEP 2143; MPEP 2143.03; *In re Rouffet*, 149 F.3d 1350, 1355-56 (Fed. Cir. 1998).

As to the references teaching (and, in fact, Applicants respectfully submit failing to teach) all of the claim limitations, Applicants respectfully offer the following. Amended independent claim 1 now reads as follows:

1. A method for communicating comprising:  
controlling a user interface presented by a web browser comprising:  
causing a web server to push an asynchronous message to the web browser in  
response to an incoming event, wherein  
the incoming event is an event other than a request for information from  
the web server,  
the web browser presents a user interface change in response to the  
asynchronous message, and  
the incoming event is received by a communication server.

(Emphasis supplied)

As can be seen, amended independent claim 1 (as well as the remaining independent claims) now recites that the incoming event is an event other than a request for information from the web server.

Delph, by contrast, is directed to a server-based host monitor, and more specifically to:

“A server-based host monitor is provided that allows a host computer to send host data to an intermediate server interfaced with a network. The intermediate server includes a conversion program that translates the host data into a format common with the network. The translated host data is made accessible to a computer interfaced with the network. The receiver computer may receive and view the translated host data in either a synchronous or asynchronous mode.” (Delph, Abstract)

Chong, also by contrast, is directed to an efficient system and method for running and analyzing multi-channel, multi-modal applications, and more specifically to:

“A system for developing, running and analyzing multi-modal applications includes a development platform, a run-time engine, and a data-mining module. Once a mobile application is built and tested on the development platform, it can be automatically deployed on the run-time system, which maintains and manages the application. Further, the data-mining system allows access to reporting and analysis tools that aid in understanding end-user behavior and preferences. This data can be used to further enhance applications by redesigning and redeploying them in a rapid and efficient manner.” (Chong, Abstract)

As will be appreciated, unlike the portions of Delph cited in the Office Action (p. 14, section 42), the incoming event is not intended to request information from the web server, but to

indicate the fact that the web browser is now available for having an asynchronous message pushed thereto. In contrast (although Applicants do not concede that such is taught by Delph, let alone in an enabling manner), the Office Action posits that Delph teaches that a request for data, once responded to, sets up a "... process [that] represents 'pushing' since no subsequent requests are required by the receiver computer to receive data. Without subsequent requests, the data is automatically sent to the receiver computer." (Emphasis supplied) Thus, Delph simply teaches, if anything, that once data is requested, additional data is sent without further requests. Such a model differs markedly from the claimed invention.

As noted, and as is now recited in the independent claims, the claimed invention merely notifies the claimed web server of the claimed web browser's availability to receive information pushed from the claimed web server. The claimed web browser does not, and need not, make any request for information from the claimed web server. Instead, the claimed web browser merely notifies the claimed web server of the claimed web browser's availability to receive information pushed from the claimed web server, and awaits receipt of whatever information is pushed from the claimed web server. The distinction between the claimed invention and Delph is thus clear: the claimed web browser, having not requested information from the claimed web server, subsequent to notification of the claimed web server, simply awaits receipt of information pushed from the claimed web server, while the system of Delph requires a request for data that then leads to the automatically sending of data to the receiver computer. Thus, Delph's approach "primes the pump," as it were, by initiating the flow of data with a request for data, an action which is unnecessary for the claimed invention.

Applicants respectfully note that Chong is neither intended to cure this infirmity of Delph, nor successfully does so. As will be appreciated, Chong is not cited in this regard

because such need has not heretofore been appreciated in the foregoing prosecution of the instant claims, nor would Applicants expect such, as Chong does not teach such a limitation, insofar as Applicants have been able to discern from a careful reading of Chong.

Applicants respectfully submit that the Office Action therefore fails to establish the presence of these limitations in Delph or Chong, alone or in permissible combination. As will be appreciated, the burden is on the Office to support a case of obviousness, including whether the prior art references teach or suggest all of the claim limitations. *See* MPEP 706.02(j). Thus, for the reasons presented above, neither Delph nor Chong, alone or in combination, teach these limitations of the instant independent claims.

In addition, Applicants also respectfully submit that the Examiner has not satisfied the burden of factually supporting the alleged motivation to combine the two references. The Examiner's duty may not be satisfied by engaging impermissible hindsight; any conclusion of obviousness must be reached on the basis of facts gleaned from the references. The Examiner must therefore provide evidence to suggest the combination and "[b]road conclusory statements regarding the teaching of multiple references, standing alone, are not 'evidence.'" *See In re Dembiczak*, 50 U.S.P.Q.2d 1614, 1617 (Fed. Cir. 1999). Further, the Office action does not establish that such a combination of the teachings of these references would meet with success, as required.

Delph, as noted, is directed to a server-based host monitor that allows a host computer to send host data to an intermediate server interfaced with a network, allowing translated host data to be made accessible to a receiver computer. In so doing, the server-based host monitor is able to communicate with the receiver computer. Thus, Delph provides a complete and standalone

solution to server-based host monitoring in situations in which conversion between the server and receiver computer is needed to support the requisite monitoring.

Chong, as also noted, is directed to a system and method for running and analyzing multi-channel, multi-modal applications. Chong's system and method allows a user to develop, run and analyze multi-modal applications. Once such an application is built and tested on Chong's development platform, the application can be automatically deployed on the run-time system, which then maintains and manages the application. Chong posits that its system and method can then be used to gather information that can then be used to further enhance applications by redesigning and redeploying them in a rapid and efficient manner. Chong's system and method are directed to such ends, and if Chong's disclosure meets such needs in a complete and standalone manner, with no need for further modification (whether to include Delph's disclosure, or otherwise).

Applicants therefore respectfully submit that such an argument fails to establish a *prima facie* case of obviousness and runs perilously close to a forbidden hindsight analysis of the references. The Office Action makes no showing of a motivation to combine Delph with Chong from within the references themselves; therefore, it must be presumed that there is none. It is well-established that the best defense to hindsight is a "rigorous application of the requirement for a showing of a teaching or motivation to combine the prior art references." *See Ecolchem, Inc. v. Southern California Edison Co.*, 227 F.3d 1361, 1371 (Fed. Cir. 2000); *Brown & Williamson Tobacco Corp. v. Philip Morris Inc.*, 229 F.3d 1120, 1124-25 (Fed. Cir. 2000). A showing of combinability must be "clear and particular" and "broad conclusive statements about the teaching of multiple references, standing alone, are not 'evidence.'" *See Ruiz v. A.B. Chance Co.*, 234 F.3d 654, 666 (Fed. Cir. 2000); *Brown & Williamson*, 229 F.3d at 1125.

The reason, suggestion, or motivation to combine may be found explicitly or implicitly: 1) in the prior art references themselves; 2) in the knowledge of those of ordinary skill in the art that certain references, or disclosures in those references, are of special interest or importance in the field; or 3) from the nature of the problem to be solved, "leading inventors to look to references relating to possible solutions to that problem."

*Ruiz*, 234 F.3d at 665.

Applicants respectfully submit nothing more than broad, generalized statements related to the motivation of a person of ordinary skill are presented in the Office Action, which Applicants further respectfully submit is insufficient to support a finding of obviousness. Applicants respectfully submit that the Office Action does not establish that the references which are combined are of special interest or importance in the field. Nor does the Office Action present any evidence of a problem to be solved from within those references themselves.<sup>1</sup> Instead, the Office Action fabricates such a problem to be solved, not from the teachings of the cited references, but from the teaching of Applicants' own disclosure.

Using Applicants' own disclosure as a blueprint for providing the motivation to combine prior art references in an obviousness determination is impermissible. *See W.L. Gore & Assoc. v. Garlock*, 721 F.2d 1540, 1552-53 (Fed. Cir. 1983) ("To imbue one of ordinary skill in the art with knowledge of the invention in suit, when no prior art reference or references of record convey or suggest that knowledge, is to fall victim to the insidious effect of a hindsight syndrome wherein that which only the inventor taught is used against its teacher.").

Even if there were reason to be found in Delph and Chong to combine their disclosures, Applicants respectfully submit that the resulting system would fail to make obvious the claimed invention. At best, the combination of Delph and Chong would provide a system and method for

running and analyzing multi-channel, multi-modal applications that would allow such operations to be performed on a receiver computer requiring a conversion between the server and receiver computer via the use of an intermediate server. Applicants are at a loss to explain (or even understand) how such a system makes obvious (or even contemplates) the claimed system, which is capable of asynchronously pushing messages to a web browser in response to an incoming event, wherein the incoming event is an event other than a request for information from the web server.

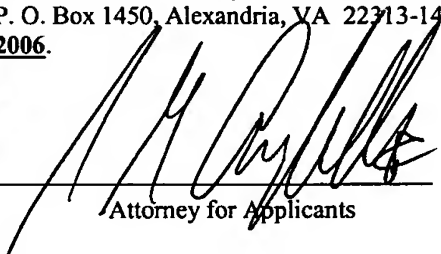
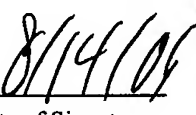
For the foregoing reasons, Applicants respectfully submit that the Office Action fails to present a *prima facie* case of obviousness of the independent claims, and all claims dependent upon them, and that they are in condition for allowance. Applicants therefore request the Examiner's reconsideration of the rejections to those claims.

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<sup>1</sup> There must be a finding that "there was a disadvantage to the prior systems, such that the 'nature of the problem' will have motivated a person of ordinary skill to combine the prior art references." *Id.* at 666.

**CONCLUSION**

In view of the amendments and remarks set forth herein, the application is believed to be in condition for allowance and a notice to that effect is solicited. Nonetheless, should any issues remain that might be subject to resolution through a telephonic interview, the Examiner is invited to telephone the undersigned at 512-439-5086.

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Mail Stop AF, COMMISSIONER FOR PATENTS, P. O. Box 1450, Alexandria, VA 22313-1450, on <u>August 14, 2006</u> .	
	
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